

**UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF VIRGINIA
RICHMOND DIVISION**

UNITED STATES OF AMERICA

v.

OKELLO T. CHATRIE,

Defendant.

Case No. 3:19-cr-00130-MHL

**MOTION FOR LEAVE TO FILE
SUPPLEMENTAL DECLARATION OF MARLO MCGRUFF**

Google LLC (“Google”) respectfully requests leave to file the attached Supplemental Declaration of Marlo McGriff (“Supplemental McGriff Declaration”) to supplement the Declaration of Marlo McGriff that Google submitted in regard to the above-captioned matter on March 11, 2020 (ECF No. 96-1) (“First Declaration”).

The Supplemental McGriff Declaration addresses one factual assertion regarding the steps a user must take to activate Location History in her Google account settings. This assertion was first made during the January 21, 2020 testimony of Spencer McInville, Mr. Chatrie’s advisory witness, ECF No. 81 (“McInville Testimony”), then was repeated in Mr. Chatrie’s supplemental memorandum in support of his Motion to Suppress Evidence Obtained from a “Geofence” General Warrant, ECF No. 104 (“Supplemental Suppression Memorandum”).

In particular, the Supplemental McGriff Declaration addresses how a user can and cannot enable Location History when presented with the option to “Get the most from Google Maps,” as discussed at page 56 of the McInville Testimony. Mr. McInville testified that “[i]f you select ‘yes, I’m in,’ it turns on Google location history.” McInville Testimony at 56. The Supplemental Suppression Memo repeats that assertion, stating that “clicking ‘YES, I’M IN’

enables [LH].” Supplemental Suppression Memo at 15. As the Supplemental McGriff Declaration makes clear, these statements are inaccurate. Google respectfully asks the Court’s leave to accept this additional filing to ensure that the record before the Court is accurate.

A district court has broad discretion to manage the proceedings before it, including “management of their dockets, the courtroom procedures, and the admission of evidence.” *United States v. Janati*, 374 F.3d 263, 273 (4th Cir. 2004); *see also id.* (collecting cases); *United States ex rel. Becker v. Westinghouse Savannah River Co.*, 305 F.3d 284, 290 (4th Cir. 2002) (“We afford substantial discretion to a district court in managing discovery and review discovery rulings only for abuse of that discretion.”). Permitting Google to file a supplemental declaration is thus well within the Court’s authority, and there is good reason for the Court to do so here. As noted, the Supplemental Declaration will ensure that the Court has a full and accurate record in addressing Defendant’s motion. Accepting the Supplemental Declaration for filing will not prejudice the parties. The declaration addresses one narrow and discrete point of fact relevant to the pending motion. The declaration does not undermine or qualify any of the facts to which Mr. McGriff attested in the First Declaration, nor the parties’ stipulation to that declaration’s accuracy, ECF No. 109 at 2. Nor does the timing of this motion prejudice the parties. The sole factual issue addressed by the Supplemental Declaration—that tapping on “Yes, I’m in” alone will not enable Location History—was not within the scope of Defendant’s Rule 17 subpoena, and so the First Declaration did not include the level of detail regarding the opt-in process reflected in the Supplemental Declaration. But Defendant’s supplemental memorandum subsequently placed considerable weight on Mr. McInville’s assertion regarding this point, and so Google has determined that it is necessary to file the Supplemental Declaration to ensure an accurate record. The Court should therefore grant Google leave to file the declaration.

Counsel for Google has consulted with counsel for both parties. Defendant objects to the relief sought by this motion. The United States has provided its consent. Pursuant to Local Rule 47(E), Google hereby waives hearing and oral argument on this motion. A proposed order is attached.

Dated: June 17, 2020

Respectfully submitted,

/s/ Brittany Amadi

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